

BOROUGH INCORPORATION STANDARDS

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Standards for borough incorporation are provided in the Constitution of the State of Alaska, Alaska Statutes, and the Alaska Administrative Code. The standards are outlined below.

Constitutional Standards for Borough Incorporation

Article X, Section 3 of the Constitution of the State of Alaska establishes constitutional standards for borough incorporation. It reads as follows:

SECTION 3. BOROUGH. The entire State shall be divided into boroughs, organized or unorganized. They shall be established in a manner and according to standards provided by law. The standards shall include population, geography, economy, transportation, and other factors. Each borough shall embrace an area and population with common interests to the maximum degree possible. The legislature shall classify boroughs and prescribe their powers and functions. Methods by which boroughs may be organized, incorporated, merged, consolidated, reclassified, or dissolved shall be prescribed by law.

On the surface, it may appear that Section 3 is the only component of the Local Government Article (Article X) of Alaska's constitution that provides borough incorporation standards. However, at least two other components of Article X provide important guidance with respect to borough incorporation.

Article X, Section 1 has been interpreted by the Alaska Supreme Court as encouraging the creation of borough governments in areas of Alaska that exhibit the characteristics of borough. Section 1 also establishes a constitutional policy favoring minimum numbers of borough governments. Section 1 states as follows:

SECTION 1. PURPOSE AND CONSTRUCTION. The purpose of this article is to provide for maximum local self-government with a minimum of local government units, and to prevent duplication of tax levying jurisdictions. A liberal construction shall be given to the powers of local government units.

Article X, Section 2 of the constitution is relevant in terms of the coexistence of city governments and borough governments. It allows, but does not require city governments within boroughs. When Section 1 and Section 2 are harmonized, it can be said that the constitution favors the merger, consolidation, or unification of city and borough governments. Section 2 provides as follows:

SECTION 2. LOCAL GOVERNMENT POWERS. All local government powers shall be vested in boroughs and cities. The State may delegate taxing powers to organized boroughs and cities only.

Statutory Standards for Borough Incorporation

Section 29.05.100(a) of the Alaska Statutes provides that the Local Boundary Commission may approve a petition for borough incorporation only if the petition, as may be amended or conditioned, (1) meets applicable constitutional standards, (2) meets standards established in regulations adopted by the Local Boundary Commission, (3) meets standards in AS 29.05.031, and (4) is in the best interests of the state. Specifically, AS 29.05.100(a) states as follows:

Sec. 29.05.100. Decision. (a) The Local Boundary Commission may amend the petition and may impose conditions on the incorporation. If the commission determines that the incorporation, as amended or conditioned if appropriate, meets applicable standards under the state constitution and commission regulations, meets the standards for incorporation under AS 29.05.011 or 29.05.031, and is in the best interests of the state, it may accept the petition. Otherwise it shall reject the petition.

Section 29.05.031 of the Alaska Statutes states as follows:

Sec. 29.05.031. Incorporation of a borough or unified municipality. (a) An area that meets the following standards may incorporate as a home rule, first class, or second class borough, or as a unified municipality:

(1) the population of the area is interrelated and integrated as to its social, cultural, and economic activities, and is large and stable enough to support borough government;

(2) the boundaries of the proposed borough or unified municipality conform generally to natural geography and include all areas necessary for full development of municipal services;

(3) the economy of the area includes the human and financial resources capable of providing municipal services; evaluation of an area's economy includes land use, property values, total economic base, total personal income, resource and

commercial development, anticipated functions, expenses, and income of the proposed borough or unified municipality;

(4) land, water, and air transportation facilities allow the communication and exchange necessary for the development of integrated borough government.

(b) An area may not incorporate as a third class borough.

Alaska Administrative Code Standards for Borough Incorporation

The Alaska Legislature has placed a duty on the Local Boundary Commission to adopt administrative regulations establishing additional standards for borough incorporation (and all other actions that come before the Commission). Specifically, AS 44.33.812(a)(2) states as follows:

Sec. 44.33.812. Powers and duties. (a) The Local Boundary Commission shall . . .

2) adopt regulations providing standards and procedures for municipal incorporation, annexation, detachment, merger, consolidation, reclassification, and dissolution;

The Commission also has authority to adopt borough incorporation regulations under Article X, Section 12 of the Alaska constitution and AS 29.05.031.

The Commission has adopted the following standards relating to borough incorporation:

3 AAC 110.045. COMMUNITY OF INTERESTS. (a) The social, cultural, and economic characteristics and activities of the people in a proposed borough must be interrelated and integrated. In this regard, the commission may consider relevant factors, including the

(1) compatibility of urban and rural areas within the proposed borough;

(2) compatibility of economic lifestyles, and industrial or commercial activities;

(3) existence throughout the proposed borough of customary and simple transportation and communication patterns; and

(4) extent and accommodation of spoken language differences throughout the proposed borough.

(b) Absent a specific and persuasive showing to the contrary, the commission will presume that a sufficient level of interrelationship cannot exist unless there are at least two communities in the proposed borough.

(c) The communications media and the land, water, and air transportation facilities throughout the proposed borough must allow for the level of communications and exchange necessary to develop an integrated borough government. In this regard, the commission may consider relevant factors, including

- (1) transportation schedules and costs;
- (2) geographical and climatic impediments;
- (3) telephonic and teleconferencing facilities; and
- (4) electronic media for use by the public.

(d) Absent a specific and persuasive showing to the contrary, the commission will presume that communications and exchange patterns are insufficient unless all communities within a proposed borough are connected to the seat of the proposed borough by a public roadway, regular scheduled airline flights on at least a weekly basis, regular ferry service on at least a weekly basis, a charter flight service based in the proposed borough, or sufficient electronic media communications.

3 AAC 110.050. POPULATION

(a) The population of a proposed borough must be sufficiently large and stable to support the proposed borough government. In this regard, the commission may consider relevant factors, including

- (1) total census enumerations;
- (2) durations of residency;
- (3) historical population patterns;
- (4) seasonal population changes; and
- (5) age distributions.

(b) Absent a specific and persuasive showing to the contrary, the commission will presume that the population is not large enough and stable enough to support the proposed borough government unless at least 1,000 permanent residents live in the proposed borough.

3 AAC 110.055. RESOURCES

The economy of a proposed borough must include the human and financial resources necessary to provide essential borough services on an efficient, cost-effective level. In this regard, the commission

- (1) will consider
 - (A) the reasonably anticipated functions of the proposed borough;
 - (B) the reasonably anticipated expenses of the proposed borough;

(C) the ability of the proposed borough to generate and collect local revenue, and the reasonably anticipated income of the proposed borough;

(D) the feasibility and plausibility of the anticipated operating and capital budgets through the third full fiscal year of operation;

(E) the economic base of the proposed borough;

(F) property valuations for the proposed borough;

(G) land use for the proposed borough;

(H) existing and reasonably anticipated industrial, commercial, and resource development for the proposed borough; and

(I) personal income of residents of the proposed borough; and

(2) may consider other relevant factors, including

(A) the need for and availability of employable skilled and unskilled persons to serve the proposed borough; and

(B) a reasonably predictable level of commitment and interest of the population in sustaining a borough government.

3 AAC 110.060. BOUNDARIES

(a) The boundaries of a proposed borough must conform generally to natural geography, and must include all land and water necessary to provide the full development of essential borough services on an efficient, cost-effective level. In this regard, the commission may consider relevant factors, including

(1) land use and ownership patterns;

(2) ethnicity and cultures;

(3) population density patterns;

(4) existing and reasonably anticipated transportation patterns and facilities;

(5) natural geographical features and environmental factors; and

(6) extraterritorial powers of boroughs.

(b) Absent a specific and persuasive showing to the contrary, the commission will not approve a proposed borough with boundaries extending beyond any model borough boundaries.

(c) The proposed borough boundaries must conform to existing regional educational attendance area boundaries unless the commission determines, after consultation with the commissioner of education and early development, that a territory of different size is better suited to the public interest in a full balance of the standards for incorporation of a borough.

(d) Absent a specific and persuasive showing to the contrary, the commission will presume that territory proposed for incorporation that is non-contiguous or that contains enclaves does

not include all land and water necessary to allow for the full development of essential borough services on an efficient, cost-effective level.

(e) If a petition for incorporation of a proposed borough describes boundaries overlapping the boundaries of an existing organized borough, the petition for incorporation must also address and comply with all standards and procedures for detachment of the overlapping region from the existing organized borough. The commission will consider and treat that petition for incorporation as also being a detachment petition.

3 AAC 110.065. BEST INTERESTS OF STATE

In determining whether incorporation of a borough is in the best interests of the state under AS 29.05.100 (a), the commission may consider relevant factors, including whether incorporation

- (1) promotes maximum local self-government;
- (2) promotes a minimum number of local government units;
- (3) will relieve the state government of the responsibility of providing local services; and
- (4) is reasonably likely to expose the state government to unusual and substantial risks as the prospective successor to the borough in the event of the borough's dissolution.

In addition to the specific standards relating to borough incorporation, the Commission has adopted other regulations establishing general requirements that are applicable to borough incorporation proposals. Those general requirements include the following:

3 AAC 110.900. TRANSITION

(a) A petition for incorporation, annexation, merger, or consolidation must include a practical plan that demonstrates the capacity of the municipal government to extend essential city or essential borough services into the territory proposed for change in the shortest practicable time after the effective date of the proposed change. A petition for city reclassification under AS 29.04, or municipal detachment or dissolution under AS 29.06, must include a practical plan demonstrating the transition or termination of municipal services in the shortest practicable time after city reclassification, detachment, or dissolution.

(b) Each petition must include a practical plan for the assumption of all relevant and appropriate powers, duties, rights, and functions presently exercised by an existing borough, city, unorganized borough service area, and other appropriate entity located in the territory proposed for change. The plan must be prepared in consultation with the officials of each existing

borough, city and unorganized borough service area, and must be designed to effect an orderly, efficient, and economical transfer within the shortest practicable time, not to exceed two years after the effective date of the proposed change.

(c) Each petition must include a practical plan for the transfer and integration of all relevant and appropriate assets and liabilities of an existing borough, city, unorganized borough service area, and other entity located in the territory proposed for change. The plan must be prepared in consultation with the officials of each existing borough, city, and unorganized borough service area wholly or partially included in the area proposed for the change, and must be designed to effect an orderly, efficient, and economical transfer within the shortest practicable time, not to exceed two years after the date of the proposed change. The plan must specifically address procedures that ensure that the transfer and integration occur without loss of value in assets, loss of credit reputation, or a reduced bond rating for liabilities.

(d) Before approving a proposed change, the commission may require that all boroughs, cities, unorganized borough service areas, or other entities wholly or partially included in the area of the proposed change execute an agreement prescribed or approved by the commission for the assumption of powers, duties, rights, and functions, and for the transfer and integration of assets and liabilities.

3 AAC 110.910. STATEMENT OF NON-DISCRIMINATION

A petition will not be approved by the commission if the effect of the proposed change denies any person the enjoyment of any civil or political right, including voting rights, because of race, color, creed, sex, or national origin.

3 AAC 110.920. DETERMINATION OF COMMUNITY

(a) In determining whether a settlement comprises a community, the commission may consider relevant factors, including whether the

(1) settlement is inhabited by at least 25 individuals;

(2) inhabitants reside permanently in a close geographical proximity that allows frequent personal contacts and comprise a population density that is characteristic of neighborhood living; and

(3) inhabitants residing permanently at a location are a discrete and identifiable social unit, as indicated by such factors as school enrollment, number of sources of employment, voter registration, precinct boundaries, permanency of dwelling units, and the number of commercial establishments and other service centers.

(b) Absent a specific and persuasive showing to the contrary, the commission will presume that a population does not constitute a community if

(1) public access to or the right to reside at the location of the population is restricted;

(2) the population is adjacent to a community and is dependent upon that community for its existence; or

(3) the location of the population is provided by an employer and is occupied as a condition of employment primarily by persons who do not consider the place to be their permanent residence.

3 AAC 110.970. DETERMINATION OF ESSENTIAL CITY OR BOROUGH SERVICES

(a) If a provision of this chapter provides for the identification of essential borough services, the commission will determine those services to consist of those mandatory and discretionary powers and facilities that, as determined by the commission,

(1) are reasonably necessary to the territory; and

(2) cannot be provided more efficiently and more effectively

(A) through some other agency, political subdivision of the state, regional educational attendance area, or coastal resource service area; or

(B) by the creation or modification of some other political subdivision of the state, regional educational attendance area, or coastal resource service area.

(b) The commission may determine essential borough services to include

(1) assessing and collecting taxes;

(2) providing primary and secondary education;

(3) planning, platting, and land use regulation; and

(4) other services that the commission considers reasonably necessary to meet the borough governmental needs of the territory.

(c) If a provision of this chapter provides for the identification of essential city services, the commission will determine those services to consist of those mandatory and discretionary powers and facilities that, as determined by the commission,

(1) are reasonably necessary to the community; and

(2) cannot be provided more efficiently and more effectively

(A) through some other agency, political subdivision of the state, regional educational attendance area, or coastal resource service area; or

(B) by the creation or modification of some other political subdivision of the state, regional educational attendance area, or coastal resource service area.

(d) The commission may determine essential city services to include

(1) levying taxes;

(2) for a city in the unorganized borough, assessing and collecting taxes;

(3) for a first class or home rule city in the unorganized borough, providing primary and secondary education in the city;

(4) public safety protection;

(5) planning, platting, and land use regulation; and

(6) other services that the commission considers reasonably necessary to meet the local governmental needs of the community.

3 AAC 110.980. DETERMINATION OF BEST INTERESTS OF THE STATE

If a provision of AS 29 or this chapter requires the commission to determine whether a proposed municipal boundary change or other commission action is in the best interests of the state, the commission will make that determination on a case-by-case basis, in accordance with applicable provisions of the Constitution of the State of Alaska, AS 29.04, AS 29.05, AS 29.06, and this chapter, and based on a review of

(1) the broad policy benefit to the public statewide; and

(2) whether the municipal government boundaries that are developed serve

(A) the balanced interests of citizens in the area proposed for change;

(B) affected local governments; and

(C) other public interests that the commission considers relevant.